

APPEAL NO. 020687
FILED MAY 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on February 19, 2002, the hearing officer concluded that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from July 26, 2001, through August 20, 2001. The appellant (carrier) has filed an appeal, contending that the evidence is insufficient to support these determinations and the related findings of fact. The carrier also requests the reformation of a finding concerning an earlier injury of _____, because the claimant filed a claim for the earlier injury but has not yet pursued it and the carrier does not want to be bound by it without having the opportunity to defend against it. The claimant filed a response, urging the sufficiency of the evidence to support the challenged findings.

DECISION

Affirmed.

The claimant, an aircraft mechanic, testified that he injured his neck on _____, while installing a ram air duct on an aircraft in a very confined space; that he reported the injury to his supervisor and continued working while self-treating his neck pain; that on _____, while removing corrosion from the interior of a wing fuel cell in a very confined space, he reinjured his neck and yelled out in pain; that a coworker heard him yell out; and that this pain was more severe than the pain he continued to have from the earlier neck injury. The claimant also stated that his doctor had him off work from July 26 through August 20, 2001, when he returned to light-duty work. The claimant's doctor provided an opinion to the effect that the claimant reinjured his neck on _____. The carrier contended that the claimant filed a claim for the _____, injury; that the carrier has denied the claim and raised defenses, including failure to timely report the injury; and that the claimant has experienced only a flare-up of symptoms from the earlier injury and did not experience new harm or damage to his neck on _____.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v.

Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We decline to modify Finding of Fact No. 2 as requested by the carrier.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE I
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge